IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3464 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VEDVA VAGRI DHAMABHAI VALABHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 18/01/2000

ORAL JUDGEMENT

#. Heard Ms.Subhadra Patel, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 20-4-99 passed by

respondent No.2 - The District Magistrate, Bhavnagar against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicates that in all 7 prohibition cases of the offence made punishable under the Bombay Prohibition Act were registered against the petitioner at Gariyadhar Town police stations in between 20-2-97 to 31-3-99. That case registered vide C.R. No : 16 of 1996 dated 31-3-99, all the cases were pending for trial. It also appears that in each case, the country made liquor was seized from the possession of the petitioner / detenu along with instrument to distill the country liquor. Over and above, 4 witnesses on assurance of anonymity have given statement dated 29-3-99 in respect to bootlegging activities of the petitioner That on the basis of said material, the respondent No.2 as the detaining authority has come to the conclusion that the petitioner / detenu is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being not sufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been submitted at bar on behalf of the petitioner that the impugned order is bad in law for non application of mind on the part of the detaining authority inasmuch as, the copies of the detention order along with the grounds of detention supplied to the detenu does not disclose the date. Thus, the detaining authority has acted mechanically. It is further submitted that privilege claimed by the detaining authority under Section 9(2) of PASA is not genuine as apparent from statement of anonymous witnesses which does not disclose verification made by the detaining authority regarding the fear expressed by the said witnesses.

#. The respondent No.2 - The District Magistrate, Bhavnagar has filed the affidavit dated 25th August, 1999 in reply to the contentions raised in the petition. That in para 7 of the affidavit, the detaining authority has explained that he has further personally called the witnesses and had verified the facts disclosed by them. Not only that but the fear expressed by them and thereafter, has exercised the privilege under Section

9(2) of the Act. In para 2, it is stated that contention raised on behalf of the petitioner that the order is without putting any date, cannot be accepted because the petitioner himself has stated in the petition that the detention order is passed on date 20-4-99.

#. In the matter of JAKIRBHAI RAHIMBHAI NAGORI VS. THE DISTRICT MAGISTRATE, MEHSANA AND OTHERS reported vide 1996 (1) GLH 300, this Court having referred to the observations made by the Division Bench in the matter of KOLI ASHWIN VS. STATE OF GUJARAT in Special Criminal Application No : 1812 of 1993 decided on 12th September, 1994 has held that it is for the detaining authority to subjectively satisfied regarding the fear expressed by the witnesses before claiming the privilege under Section 9(2) of PASA. That the said subjective satisfaction should reflect in the grounds of the detention or any contemporaneous record.

#. That in the instant case, the grounds of detention discloses that the detaining authority himself has called the witnesses for verification of statement. The copies of the statement produced on record suggests that the facts stated by the witnesses were verified by the Dy.S.P. and the District Magistrate has merely put is signature. Thus, the fact apparent from the document itself does not support the statement made by the detaining authority in the grounds of detention as well as in the affidavit in reply. That neither the document nor the grounds of detention discloses that the privilege exercised under Section 9(2) of PASA is genuine. In the facts and circumstances of the case, it is difficult to hold that the detaining authority himself has verified the fear expressed by the said witnesses, consequently, the said act and action of the detaining authority having violated the mandate of Article 22(5) of the Constitution of India prevented the petitioner / detenu from making effective representation, the impugned order is invalid. It is also necessary to note that though the detaining authority - respondent No.2 has denied in his affidavit in reply, the original order supplied to the detenu, copy of which is produced on record on running page 7 to 11 clearly discloses that no date has been place either on the compilation of order or in the grounds of detention. Thus, the order itself suggests that non application of mind on the part of the detaining authority while passing the impugned order, whereby, it is difficult to uphold the same though strenuously urged by the learned AGP.

#. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other

contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 20-4-99 passed by respondent No.2 - The District Magistrate, Bhavnagar against the petitioner is hereby quashed and set aside. The petitioner - Vedva Vagri Dhamabhai Valabhai is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 18-1-2000 [A.K.Trivedi, J.]

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